United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

No. 11,514

BRIEF FOR APPELLANT

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

GEORGE ERIC ROSDEN, Ancilliary Administrator of the Estate of Mrs. Amalie Schaefer Janner, deceased,

Appellant,

v.

HERBERT BROWNELL, JR., Attorney General of the United States, et al.,

Appellees.

Appeal from the United States District Court for the District of Columbia

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United States Court of Appeals
For the
District of Columbia Circuit
FILED NOV 13 1952
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WILSON - EPES PRINTING CO. - RE 6003 - WASHINGTON 1, D. C.

No. 11,514

APPELLANT'S STATEMENT OF QUESTIONS PRESENTED

Can an American-born woman who qualifies under the language of Sec. 9(B)(3) of the Trading With the Enemy Act (50 USCA App. 1 ff.) obtain return of property vested by the Office of Alien Property during or after World War II, or is the operation of the said provision limited to cases arising from World War I?

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In The

United States Court of Appeals

For the District of Columbia Circuit

No. 11,514

George Eric Rosden, Ancilliary Administrator of the Estate of Mrs. Amalie Schaefer Janner, deceased,
Appellant,

v.

James P. McGranery, Attorney General of the United States, et al.,
Appellees.

Appeal from the United States District Court for the District of Columbia

---

BRIEF FOR APPELLANT

OPINION AND JUDGMENT BELOW

The opinion of the United States District Court for the District of Columbia (H. A. Schweinhaut) was filed on March 31, 1950 (Rec. 14), modified by the final order, entered March 26, 1952 (Rec. 24). Notice of appeal was filed on May 24, 1952 (Rec. 25).

JURISDICTION

(1) Appellant is Ancillary Administrator of the estate of a woman who at the time of her marriage was a citizen of the United States and intermarried with a citizen of Germany prior to April 6, 1917, (Amended Complaint Sec. 13, (Rec. 8/9), and whose property, acquired by her by inheritance from her American father, was vested by the Office of Alien Property, Department of Justice, pursuant to the Trading with the Enemy Act. By Section 9(b)(3) of the said Act, the Government has consented to be sued for return of such vested property by such persons as appellant and his predecessor in law allege to be.

(2) Jurisdiction of the United States Court of Appeals for the District of Columbia Circuit is based on Title 28, Sec. 1291 United States Code.

STATUTE INVOLVED

The statutory provision involved is Section 9(b)(3) of the Trading with the Enemy Act, reading as follows:

> (b) "In respect of all money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, if the President shall determine that the owner thereof at the time such money or other property was required to be so conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or at the time when it was voluntarily delivered to him or was seized by him was—
>
> (1) . . .
>
> (2) . . . .
>
> (3) A woman who at the time of her marriage was a citizen of the United States, and who prior to April 6, 1917, intermarried with a subject or citizen of Germany or Austria-Hungary, and that the

money or other property concerned, was not acquired by such woman, either directly or indirectly, from any subject or citizen of Germany or Austria-Hungary subsequent to January 1, 1917; or who was a daughter of a resident citizen of the United States and herself a resident or former resident thereof, or the minor daughter or daughters of such woman, she being deceased."

SUMMARY STATEMENT OF THE CASE

Mrs. Amalie Janner, appellant's predecessor in law, was an American citizen, when, in 1907, she married a German citizen, meanwhile deceased, whereby she lost her American citizenship pursuant to statutes then in effect. (amd'd complaint, Sec. 13, Rec. 8/9). She acquired certain property by inheritance from her father, an American citizen and resident, in 1913. (Amd'd complaint, Sec. 14, Rec. 9). This property was vested during World War I and returned to her pursuant to Sec. 9(b)(3) of the Trading with the Enemy Act. (Amd'd complaint, Sec. 15, Rec. 9). After the Second World War, the same property was vested again. (Amd'd complaint, Sections 5-10, 14; Rec. 2-9). Notice of Claim was filed on April 15, 1949 (Amd'd complaint, Sec. 16, Rec. 9). No return having ensued, this action was filed. Appellee's motion to dismiss was granted on the ground that Section 9(b)(3) of the Trading with the Enemy Act is not applicable to cases arising from World War II. (Rec. 24). Notice of Appeal was filed timely (Rec. 25).

STATEMENT OF POINT

The court below erred in that it held that Section 9(b)(3) of the Trading with the Enemy Act does not apply to cases arising from World War II.

SUMMARY OF ARGUMENT

Section 9(b)(3) of the Trading with the Enemy Act is permanent legislation:

1.) The legislative intent of Section 9(b)(3) of the Act was to remedy a wrong that was inherent in the original Act.
2.) The wrong that was being redressed was in no way particular to World War I circumstances and the Legislature was aware thereof.
3.) Both in the House and the Senate, the remarks made on the floor by the Committee members in charge of reporting the Bill, show the intent of righting a wrong and of a concept of permanent legislation.
4.) The Supreme Court decision of *Markham v. Cabell* supports appellant's contention, the prior opinion having overlooked a qualification in the said decision of the United States Supreme Court.
5.) The Public Policy supports appellant's contention.

ARGUMENT

(1) The Problem and Prior Decisions.

Section 9(b)(3) of the Trading with the Enemy Act contains the Government's consent to be sued for return of vested property by women who lost their American citizenship by intermarriage with Germans or Austro-Hungarians prior to April 6, 1917, under certain conditions. This Act, as amended, went into effect again at the outbreak of World War II.[1]

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[1] *Markham v. Cabell* 326 US 404, 90 L.ed. 165, 66 Sup. Ct. 193. See also Sec. 302 of the First War Powers Act, 55 Stat. 840, 50 USCA, App. 617.

Section 9(b)(3) of the Act was promulgated by amendment on June 5, 1920.[2] The question now arises whether this section was mere temporary legislation, applicable to World War I seizures only or otherwise incapable of application in World War II, or whether it is still valid.

The court below followed the decision of this Court in *Feyerabend v. McGrath,*[3] holding Section 9(b)(3) of the Act to be temporary legislation, applicable to World War I cases only.

It is respectfully submitted that the *Feyerabend* decision requires scrutiny in the light of recognized tenets of statutory construction as well as with respect to recognition of and obeisance to the legislative intent of Congress.

(2) The Legislative Purpose of Section 9(B)(3) of the Act.

The dominant factor governing the interpretation of statutes is the purpose underlying the Congressional enactment,[4] and such interpretation is to be made as will effectuate that purpose best.[5]

The purposes of Congress appear quite clearly from the record:

a) Mr. Montague, a member of the Committee of Interstate and Foreign Commerce of the House, speaking

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[2] 41 Stat. 977, 50 USCA App. 9.

[3] 189 F(2d) 694.

[4] *United States v. CIO,* 355 US 106, 92 L.ed. 1849, 68 Sup. Ct. 1349; *Haggar v. Helvering,* 308 US 389, 84 L.ed. 340, 60 Sup. Ct. 337; *United States v. Katz,* 271 US 354, 70 L.ed. 986, 46 Sup. Ct. 513.

[5] *United States v. Public Utility Commission,* 80 App. DC 227, 151 F. (2d) 609.

for the Committee in reporting the amendatory Bill to the floor of the House, said:[6]

> ". . . I think that this bill amply safeguards and protects all rights and interests. It will open up no such imaginary wrongs as have disturbed the gentleman from Texas, *It is simply to do justice, and to right what are now very acute existing wrongs.* For example, to enable certain married women whose property was not inherited from the enemies, whose property was their own, to have control of their own property. That is one of the prominent items in the bill. I have no time to go further into the matter, but I felt, as a member of the Committee, I should make this assurance at least to the House." (Italics supplied).

b) Senator Knox of the Senate Judiciary Committee said in the debate on the floor:[7]

> "Why should a woman whose fortune has been made by her ancestors in this country have taken away from her under what the Supreme Court of the United States, speaking through the Great Chief Justice Marshall pronounced to be an act of land piracy if you took from her her fortune because, by the mere act of marriage, she is technically an alien enemy."

c) Senator Brandegee said on the floor of the Senate:[8]

> "These American girls, for their own reason or lack of reason, or for no reason at all, fell in love with some foreigners, and married them. I do not suppose it entered the head of one in twenty of them to inquire whether they lost their citizenship or anything about it. Many of them have their properties in trust. After a while, war breaks out with some foreign power, and if their husbands happen to be

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[6] *Congressional Record* (1920), 66th Congress, 2nd Session, p. 8429.

[7] *Idem*, page 8473.

[8] *Idem*, page 8474.

> located within the boundaries of the country against which we declare war, we confiscate all their property. . . ."

d) Senator Nelson, reporting the Bill for the Senate Judiciary Committee, said on the floor:[9]

> ". . . If she is a native-born American born woman and lost her citizenship either by marrying a neutral before the war or by marrying an Alien enemy, such as a German before the war, she is authorized to regain her property, not the property of her husband."

Statements made by Committee members in charge of presenting bills on the floor being considered like supplementary Committee Reports and, if a bill is adopted, being deemed to show the legislative intent,[10] the statements by Senator Nelson and Representative Montague assume particular importance.

It is patently obvious that the wrong Congress wanted to redress and remedy was not a wrong the nature of which was particular to World War I, but that this was a wrong in the statute that appeared to require remedial legislation. If, thus, the legislature wanted to remedy a wrong that was not specifically restricted to circumstances surrounding World War I, then it appears erroneous to see in the use of the words "Germans or Austro-Hungarians" an intent to restrict application to World War I cases. This view is supported with particularity by the pointed references of the legislators to

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[9] *Idem*, page 8472.

[10] *Sutherland on Statutory Construction*, Horack's 3rd Ed. II, Sec. 5012, p. 504. *Duplex v. Deering* (1921), 254 US 443, 65 L.ed. 349, 41 Sup. Ct. 172; *District of Columbia v. Newman*, 59 App. DC 163, 37 F. (2d) 444 cert. den. 281 U.S. 733; *District of Columbia v. Steinberg*, 59 App. D.C. 167, 37 F. (2d) 448 cert. den. 281 U.S. 733.

marriages to *Alien enemies.* (Senator Nelson, Senator Knox, Senator Brandegee, *supra*).

The interpretation placed upon the statute by this Court frustrates the declared purpose of the legislation. In the words of Mr. Chief Justice Vinson:[11]

> "We must heed the equally well settled doctrine of this Court to read a statute, assuming that it is susceptible of either of two opposed interpretations, in the manner which effectuates rather than frustrates the major purpose of the legislative draftsmen."

And if there be objections on the ground of literalness, then the words of Mr. Justice Reed in *United States v. American Trucking Association*[12] be remembered:

> "Frequently, however, even when the plain reading did not produce absurd results but merely an unreasonable one" plainly at variance with the policy of the legislation on the whole, "this Court has followed that purpose rather than the literal words."

(3) The Case of Markham v. Cabell.[13]

Judge Proctor has based his opinion in the *Feyerabend* case on the decision of the United States Supreme Court in the case of *Markham v. Cabell.* It is respectfully submitted that the meaning and import of that decision has been misunderstood and applied contrary to its intent and language.

In the *Cabell* case, the question at bar was whether the statute of limitations, contained in Section 9(e) of the Act, and limiting recoveries of debts to cases wherein such debts were owing prior to October 6, 1917 and provided

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[11] *Shapiro v. United States,* 335 US 1, 92 L.ed. 1787, 68 Sup.Ct. 1375.

[12] 310 US 534, 84 L. ed. 1345, 60 Sup.Ct. 1059; See also Ozawa v. United States, 260 US 178 (194), 67 L.ed. 199, 43 Sup. Ct. 65.

[13] 326 US 404, 90 L.ed. 165, 66 Sup.Ct. 193.

that application had been filed prior to a date certain in the year of 1928, applied only to World War I.

It was and is clear that this proviso would have emasculated any right of recovery for debts in cases arising from wars other than World War I. As Mr. Justice Douglas said:

> "If we gave Section 9(e) that broad interpretation, we would, in the third place, deprive Section 9(a) of all meaning so far as World War II claims are concerned. That we hesitate to do, for the Act was not only designed to operate in the first World War; it was also to become effective at the time of any future war unless repealed or superseded. Yet the remedy afforded by Section 9(a) would be quite illusory and ineffective so far as it applies to World War II claims if Sec. 9(e) were read literally without regard to its history."

This very opinion is used as the basis for just as complete a disregard for the legislative history, and is made the justification for the very action it bars!

Mr. Justice Douglas based his opinion in the *Cabell case,* obvious as the conclusion was on the basis of pure common sense, on three cumulative points. The third one of these points we have just recited. The first one of these points attaches importance to the term "associated with the United States in the prosecution of the war", declaring this terminology to be indicative of its intended use for World War I only. Since this term is not used in Section 9(b)(3), this point is not applicable in the case at bar.

There remains the second point, namely the fact that the date of October 6, 1917, suggested that Congress was concerned with temporary legislation meant for World War I only. Mr. Justice Douglas was careful, however, to point out in this connection, that:

> "The Committee Reports accompanying the legislation by which Sec. 9(e) was added to the law, while

> not explicit on the precise point, show that Congress was concerned solely with the handling of claims which then existed. *There is not the slighted suggestion that Congress was drafting a statute of limitations likewise applicable to claims which might be asserted in case the United States at some future time went again to war."* (Emphasis supplied).

Thus, Mr. Justice Douglas pointed out one of the most basic rules of statutory construction, namely that the legislative history must be resorted to in order to determine the meaning of a statute. He resorted to that legislative history and, in the question then at bar, it contained nothing to indicate an intent at variance with his conclusion.

In seeking to apply Mr. Justice Douglas' reasoning to the question here at bar, Judge Proctor failed to observe this *conditio sine qua non:* He failed to scrutinize or pay any heed to the legislative history which is so patently clear in regard to Sec. 9(b)(3) of the Act.

(4) Public Policy.

It has been the public policy of the Congress to give a special status to American-born women who married foreigners.

Originally, by Act of March 2, 1907,[14] Congress had determined that American-born women who marry a foreigner would lose their American citizenship. The next step was the enactment of Sec. 9(b)(3) of the Trading with the Enemy Act, giving such women a special advantage. This subsection was enacted on June 5, 1920. Already two years later, the public policy in regard to American-born women who had married foreigners was advanced to the point of an enactment revoking the Act of March 2, 1907 and determining that they would retain

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[14] 34 Stat. 1228.

their citizenship.[15] Later enactments improved the position of such women further.[16]

Finally, by amendment[17] of Sec. 32(a)(2)(D) of the Act, *administrative* return was authorized to women who had lost their American citizenship by marriage and had regained it prior to September 29, 1950.

Thus, these statutes, practically being statutes *in pari materia,* show a general legislative policy towards granting a special status to American women married to foreigners. This legislative policy was not peculiarly restricted to the period of World War I. On the contrary, it was developed with constancy and consistency ever since.

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[15] The Cable Act of Sept. 22, 1922 (42 Stat. 1022).

[16] Acts of July 3, 1930 (46 Stat. 854), March 3, 1931 (46 Stat. 1511), June 27, 1943 (48 Stat. 1245).

[17] 64 Stat. 1080.

(5) Conclusion.

It is concluded that the tenets of statutory construction as pronounced by this Court and the United States Supreme Court strongly favor an interpretation by which the statutory command of Sec. 9(b)(3) of the Trading with the Enemy Act is upheld for cases arising from World War II.

Appellant submits that this Court should reverse the decision below and direct the District Court to vacate and set aside its order dismissing the suit and direct the District Court to deny appellee's motion to dismiss.

Respectfully submitted

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BRIEF FOR APPELLEES

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
For the
District of Columbia Circuit

FILED DEC 18 1952

Joseph W. Stewart
CLERK

No. 11514

GEORGE ERIC ROSDEN, ANCILLARY ADMINISTRATOR OF THE ESTATE OF MRS. AMALIE SCHAEFER JANNER, DECEASED, APPELLANT,

v.

HERBERT BROWNELL, JR., Attorney General of the United States, et al.,

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

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JAMES D. HILL,
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STATEMENT OF QUESTION PRESENTED

Whether this Court correctly held in *Feyerabend* v. *McGrath*, 89 U. S. App. D. C. 33, 189 F. 2d 694, that Section 9(b)(3) of the Trading with the Enemy Act, which permitted recovery of property under certain conditions by "a woman who at the time of her marriage was a citizen of the United States, and who prior to April 6, 1917, intermarried with a subject or citizen of Germany or Austria-Hungary", was limited in its application to property seized during World War I.

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11514

GEORGE ERIC ROSDEN, ANCILLARY ADMINISTRATOR OF THE ESTATE OF MRS. AMALIE SCHAEFER JANNER, DECEASED, APPELLANT,

v.

JAMES P. MCGRANERY, ATTORNEY GENERAL OF THE UNITED STATES, ET AL., APPELLEES

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLEES

COUNTER-STATEMENT OF THE CASE

Appellant's suit is for the return of property vested pursuant to Section 5(b) of the Trading with the Enemy Act (40 Stat. 415, as amended, 50 U.S.C. App. § 5(b)) as belonging to a resident and national of Germany (R. 2-9). The complaint alleges (R. 1-10), *inter alia,* that Mrs. Amalie Janner, appellant's predecessor in law, was a United States citizen; that in 1907 she married a German citizen and consequently lost her American citizenship; that she is presently a citizen of Germany residing in Germany; that she acquired the property in issue by inheritance from her father, an American citizen, and that none of it was derived from her husband, now deceased.

The complaint was filed under Section 9(b)(3) of the

Trading with the Enemy Act (50 U.S.C. App. § 9(b)(3)). That Section, enacted in 1920 (41 Stat. 977) and subsequently modified in 1921 (41 Stat. 1147) and 1923 (42 Stat. 1512), granted a right of return where it appeared that the claimant was:

> A woman who at the time of her marriage was a citizen of the United States, and who prior to April 6, 1917, intermarried with a subject or citizen of Germany or Austria-Hungary, and that the money or other property concerned, was not acquired by such woman, either directly or indirectly, from any subject or citizen of Germany or Austria-Hungary subsequent to January 1, 1917; or who was a daughter of a resident citizen of the United States and herself a resident or former resident thereof, or the minor daughter or daughters of such woman, she being deceased.

Appellee moved to dismiss on the ground that Section 9(b)(3) has no application whatever to property vested in World War II and does not constitute a consent by the United States to be sued for the recovery of such property (R. 22). Judge Schweinhaut dismissed the complaint on the authority of *Feyerabend* v. *McGrath,* 89 U. S. App. D. C. 33, 189 F. 2d 694 (R. 24).

STATUTE INVOLVED

The statute involved in this case is the Trading with the Enemy Act, as amended (40 Stat. 411; 50 U.S.C., § 1 *et seq.*), and particularly Sections 9(a), 9(b), 9(c) and 32 thereof, parts of which are set out in the appendix hereto (*infra,* pp. 8-18).

SUMMARY OF ARGUMENT

This Court held in *Feyerabend* v. *McGrath* that Section 9(b)(3) of the Trading with the Enemy Act was applicable only to property seized during World War I. That decision was clearly correct, and appellant presses no argument that was not fully briefed and considered by this Court in the former case. There is no merit to appellant's contentions that *Markham* v. *Cabell,* 326 U. S. 404, was misunderstood by this Court or that the legislative history of 9(b)(3), which is irrelevant in view of subsequent history, was not given

adequate consideration, and that had proper weight been given to it, this Court would have held Section 9(b)(3) to be permanent legislation.

ARGUMENT

In *Feyerabend* v. *McGrath,* this Court had before it, in addition to an argument irrelevant here, the question whether Section 9(b)(3) of the Trading with the Enemy Act was applicable to World War II. Since appellant in effect asks this Court to overrule that decision, we quote in full the former opinion as it dealt with Section 9(b)(3):

> It seems equally clear to us that appellant has no right to sue under § 9(b)(3). We agree with appellees' contention that § 9(b)(3) was temporary legislation applicable only to property seized during World War I. That, we think, is the only conclusion to be drawn from *Markham* v. *Cabell,* 1945, 326 U. S. 404, 66 S. Ct. 193, 90 L. Ed. 165, which upholds a similar contention as to § 9(e). Both the majority and concurring opinions point to certain "hallmarks" in the legislative language of § 9(e) which clearly relate only to World War I. Sections 9(b)(3) and 9(e) originated as part of a single enactment, 41 Stat. 977, Act June 5, 1920, 50 U.S.C.A. Appendix, §§ 9 (b)(3), 9(e). In both we find equally certain "hallmarks" pointing only to World War I. Such are the provisions in § 9(b)(3), restricting claims to female citizens of the United States, who married subjects of Germany or Austria-Hungary before April 6, 1917, and excluding property acquired from any subject or citizen thereof after January 1, 1917. Those dates have no possible relevancy to World War II, but do have a positive relevancy to World War I. They plainly stamp § 9(b)(3) as applicable only to property seized during that war, and we so hold. 189 F. 2d at 696; 89 U. S. App. D. C. at 35.

This decision is clearly correct for the reason stated, namely, that on its face Section 9(b)(3) is stamped with certain hallmarks which show that it was applicable only to World War I. Appellant, however, suggests that this Court did not give sufficient weight to the legislative history of the Section, and that had it done so, it would have held the Section still to be effective on the ground that it was passed

to "remedy a wrong that was not specifically restricted to circumstances surrounding World War I." (Br. p. 7). This argument was fully briefed on the appeal of the *Feyerabend* case and we shall show that the World War II provisions of the Trading with the Enemy Act are irreconcilable with the return legislation passed between 1920 and 1928 upon which appellant relies.

The Trading with the Enemy Act, as adopted in 1917, provided for seizure of enemy property (Section 7(c)), provided for the return of property mistakenly seized (Section 9(a)), but left open for future determination the disposition of property that actually proved to be enemy-owned (Section 12). In the years 1920-1928, by a series of amendments, Congress made progressively liberal provisions for the return of enemy property. The Act of June 5, 1920 (41 Stat. 977) authorized the return of seized enemy property to eight classes of claimants (Section 9(b) subdivisions 1-8), including "a woman who at the time of her marriage was a citizen of the United States, and who prior to April 6, 1917 intermarried with a subject of Germany or Austria-Hungary", providing the property concerned was not acquired from an enemy (Section 9(b)(3)). By Act of March 4, 1923 (42 Stat. 1511), Congress added three more subdivisions (9-11) which authorized the return of property to enemies of a value not to exceed $10,000 per claimant. Finally, by the Settlement of War Claims Act of 1928 (Act of March 10, 1928, 45 Stat. 270), subdivisions 12-22 were added to Section 9(b) which provided for the return of 80% of all enemy property.

These provisions remained unchanged until the 1930's when Germany defaulted on her reparation agreement. When this occurred, Congress, on June 27, 1934, adopted Public Resolution No. 53 (48 Stat. 1267), providing that so long as Germany remained in arrears, all returns of enemy property authorized by the Act should be postponed. Germany has remained in default since 1934, and the Resolution has remained in effect according to its terms,[1] so that even

[1] Certain exceptions, not here pertinent, were made by Executive Order No. 7111.

if appellant were suing here for property clearly falling within the ambit of 9(b), i.e., World War I property, there would be a barrier to recovery.

The World War II amendments to the Trading with the Enemy Act are totally inconsistent with the contention that the return provisions of Section 9(b) retain vitality. While Section 9(a) authorized the return as of right to any person not an enemy as defined in the Act, it does not authorize the return of vested property to many persons who are technical enemies, i.e., Frenchmen and Belgians who were residents of occupied territory, and Germans who were persecuted by their own country on political, racial or religious grounds. In recognition of this fact, Congress in 1946 enacted Section 32 in order to enable the President to make discretionary administrative returns to persons so situated. *McGrath* v. *Zander,* 85 U. S. App. D. C. 334, 177 F. 2d 649. The purpose was stated by the Senate Committee on the Judiciary as follows:

> These persons have, in the opinion of the committee, a strong moral right to the return of their property, but, legislation is required to bring this about since present law does not permit return of the property of even these technical "enemies". (S. Rep. 920, 79th Cong., 2d Sess.)

Clearly Congress did not regard Section 9(b), upon which appellant relies, as in force, for Section 9(b) as it has stood since 1928 not only provided for returns to "technical enemies" but for a return to all enemies.

On September 29, 1950, Congress amended subdivision (a)(2)(D) of Section 32 (64 Stat. 1080) to authorize an administrative return to an individual "who, having lost United States citizenship solely by reason of marriage to a citizen or subject of a foreign country, reacquired such citizenship prior to September 29, 1950, if such individual would have been a citizen of the United States at all times since December 7, 1941, but for such marriage."[2] In intro-

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[2] By Public Law 378, 82d Congress, approved June 6, 1952 (66 Stat. 129) the amount returnable under this Section was increased from $5,000,000 to $9,000,000.

ducing this amendment, Senator McCarran stated on the floor of the Senate:

> Under existing law, the Alien Property Custodian is prohibited from making returns of this vested property, a situation which gives rise to obvious inequities and one toward which this bill is directed. 96 Cong. Rec. p. 11,109, 81st Cong. 2d Sess.

We submit that the 1950 amendment of Section 32(a)(2)(D) was clearly intended as the World War II counterpart of Section 9(b)(3), and gives added confirmation to this Court's conclusion in the *Feyerabend* case that Section 9(b)(3) was temporary legislation applicable only to World War I. Cf. *Posadas* v. *National City Bank,* 296 U. S. 496, 503, 504.

In short, Section 32 is comprehensive legislation intended by Congress to provide returns of property seized in World War II to various classes of "technical" or "non-hostile" enemies; as the Act of June 5, 1920 (41 Stat. 977) was intended to do with respect to enemy property seized in World War I. There would have been no purpose to the enactment of Section 32 if Section 9(b) were applicable to property seized in World War II. Indeed, there would have been no point to the seizure of German property in World War II at all, for Section 9(b) would have required its immediate return.

The anomaly of appellant's argument is striking; because Mrs. Janner was a person falling within the language of Section 9(b)(3), the claim is made that she was entitled to a return, as of right, of her property vested during World War II even though she was a citizen of Germany from 1907 until her death, although a woman who married a German at any time after April 6, 1917 could not possibly come within the language of Section 9(b)(3) and under Section 32, is entitled only to an administrative return providing she reacquired her American citizenship before September 29, 1950.

Unlike the amendments to the Trading with the Enemy Act passed after World War I which provided for the return of enemy property to the former enemy owner, Congress,

by enacting Section 39 (Act of July 3, 1948, 62 Stat. 1246) has directed that enemy property be retained and covered into the treasury to be used to compensate war claimants. *Guessefeldt* v. *McGrath*, 342 U. S. 308. Since Mrs. Janner was an enemy as defined in the Act, and since she does not come within the provisions of Section 32 which makes certain exceptions in favor of technical enemies, appellant is not entitled to a return of the vested property.

CONCLUSION

The judgment of the District Court should be affirmed.

Respectfully submitted,

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APPENDIX

SUPPLEMENT

Trading with the Enemy Act, c. 106, 40 Stat. 411, as amended, 50 U.S.C. 1 *et seq:*

Section 9(a):

That any person not an enemy or ally of the enemy claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, or to whom any debt may be owing from an enemy or ally of enemy whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine said claimant is entitled: *Provided,* That no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant to establish any right, title, or interest which he may have in such money or other property. If the President shall not so order within sixty days after the filing of such application or if the claimant shall have filed the notice as above required and shall have made no application to the President, said claimant may institute a suit in equity in the Supreme Court of the District of Columbia or in the district court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principal place of business (to which suit the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant), to establish the interest, right, title, or debt so claimed, and if so established

the court shall order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States or the interest therein to which the court shall determine said claimant is entitled. If suit shall be so instituted, then such money or property shall be retained in the custody of the Alien Property Custodian, or in the Treasury of the United States, as provided in this Act, and until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied by payment or conveyance, transfer, assignment, or delivery by the defendant, or by the Alien Property Custodian, or Treasurer of the United States on order of the court, or until final judgment or decree shall be entered against the claimant or suit otherwise terminated.

(b) In respect of all money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, if the President shall determine that the owner thereof at the time such money or other property was required to be so conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or at the time when it was voluntarily delivered to him or was seized by him was—

(1) A citizen or subject of any nation or State or free city other than Germany or Austria or Hungary or Austria-Hungary, and is at the time of the return of such money or other property hereunder a citizen or subject of any such nation or State or free city; or

(2) A woman who, at the time of her marriage, was a subject or citizen of a nation which has remained neutral in the war, or of a nation which was associated with the United States in the prosecution of said war, and who, prior to April 6, 1917, intermarried with a subject or citizen of Germany or Austria-Hungary and that the money or other property concerned was not acquired by such woman, either directly or indirectly, from any subject or citizen of Germany or Austria-Hungary subsequent to January 1, 1917; or

(3) A woman who at the time of her marriage was a citizen of the United States, and who prior to April 6, 1917, intermarried with a subject or citizen of Ger-

many or Austria-Hungary, and that the money or other property concerned was not acquired by such woman, either directly or indirectly, from any subject or citizen of Germany or Austria-Hungary subsequent to January 1, 1917; or who was a daughter of a resident citizen of the United States and herself a resident or former resident thereof, or the minor daughter or daughters of such woman, she being deceased; or

(3A) An individual who was at such time a citizen or subject of Germany, Austria, Hungary, or Austria-Hungary, or not a citizen or subject of any nation, state or free city, and that the money or other property concerned was acquired by such individual while a bona fide resident of the United States, and that such individual, on January 1, 1926, and at the time of the return of the money or other property, shall be a bona fide resident of the United States; or

(3B) Any individual who at such time was not a subject or citizen of Germany, Austria, Hungary, or Austria-Hungary, and who is now a citizen or subject of a neutral or allied country: *Provided, however,* That nothing contained herein shall be construed as limiting or abrogating any existing rights of an individual under the provisions of this Act; or

(4) A citizen or subject of Germany or Austria or Hungary or Austria-Hungary and was at the time of the severance of diplomatic relations between the United States and such nations, respectively, accredited to the United States as a diplomatic or consular officer of any such nation, or the wife or minor child of such officer, and that the money or other property concerned was within the territory of the United States by reason of the service of such officer in such capacity; or

(5) A citizen or subject of Germany or Austria-Hungary, who by virtue of the provisions of sections 4067, 4068, 4069, and 4070 of the Revised Statutes, and of the proclamations and regulations thereunder, was transferred, after arrest, into the custody of the War Department of the United States for detention during the war and is at the time of the return of his money or other property hereunder living within the United States; or

(6) A partnership, association, or other unincorporated body of individuals outside the United States, or a corporation incorporated within any country other

than the United States, and was entirely owned at such time by subjects or citizens of nations, States, or free cities other than Germany or Austria or Hungary or Austria-Hungary and is so owned at the time of the return of its money or other property hereunder; or

(7) The Government of Bulgaria or Turkey, or any political or municipal subdivision thereof; or

(8) The Government of Germany or Austria or Hungary or Austria-Hungary, and that the money or other property concerned was the diplomatic or consular property of such Government; or

(9) An individual who was at such time a citizen or subject of Germany, Austria, Hungary, or Austria-Hungary, or who is not a citizen or subject of any nation, State or free city, and that such money or other property, or the proceeds thereof, if the same has been converted, does not exceed in value the sum of $10,000, or although exceeding in value the sum of $10,000 is nevertheless susceptible of division, and the part thereof to be returned hereunder does not exceed in value the sum of $10,000: *Provided,* That an individual shall not be entitled, under this paragraph, to the return of any money or other property owned by a partnership, association, unincorporated body of individuals, or corporation at the time it was conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian, or seized by him hereunder; or

(10) A partnership, association, other unincorporated body of individuals, or corporation, and that it is not otherwise entitled to the return of its money or other property, or any part thereof, under this section, and that such money or other property, or the proceeds thereof, if the same has been converted, does not exceed in value the sum of $10,000, or although exceeding in value the sum of $10,000, is nevertheless susceptible of division, and the part thereof to be returned hereunder does not exceed in value the sum of $10,000; or

(11) A partnership, association, or other unincorporated body of individuals, having its principal place of business within any country other than Germany, Austria, Hungary, or Austria-Hungary, or a corporation, organized or incorporated within any country other than Germany, Austria, Hungary, or Austria-Hungary, and that the control of, or more than 50 per centum of the interests or voting power in, any such partnership, association, other unincorporated body

of individuals, or corporation, was at such time, and is at the time of the return of any money or other property, vested in citizens or subjects of nations, States, or free cities other than Germany, Austria, Hungary, or Austria-Hungary: *Provided, however,* That this subsection shall not affect any rights which any citizen or subject may have under paragraph (1) of this subsection; or

(12) A partnership, association, or other unincorporated body of individuals, or a corporation, and was entirely owned at such time by subjects or citizens of nations, States, or free cities other than Austria or Hungary or Austria-Hungary and is so owned at the time of the return of its money or other property, and has filed the written consent provided for in subsection (m); or

(13) A partnership, association, or other unincorporated body of individuals, having its principal place of business at such time within any country other than Austria Hungary, or Austria-Hungary, or a corporation organized or incorporated within any country other than Austria, Hungary, or Austria-Hungary, and that the written consent provided for in subsection (m) has been filed; or

(14) An individual who at such time was a citizen or subject of Germany or who, at the time of the return of any money or other property, is a citizen or subject of Germany or is not a citizen or subject of any nation, State, or free city, and that the written consent provided for in subsection (m) has been filed; or

(15) The Austro-Hungarian Bank, except that the money or other property thereof shall be returned only to the liquidators thereof; or

(16) An individual, partnership, association, or other unincorporated body of individuals, or a corporation, and that the written consent provided for in subsection (m) has been filed, and that no suit or proceeding against the United States or any agency thereof is pending in respect of such return, and that such individual has filed a written waiver renouncing on behalf of himself, his heirs, successors, and assigns any claim based upon the fact that at the time of such return he was in fact entitled to such return under any other provision of this Act; or

(17) A partnership, association, or other unincorporated body of individuals, or a corporation, and was

entirely owned at such time by citizens of Austria and is so owned at the time of the return of its money or other property; or

(18) A partnership, association, or other unincorporated body of individuals, having its principal place of business at such time within Austria, or a corporation organized or incorporated within Austria; or

(19) An individual who at such time was a citizen of Austria or who, at the time of the return of any money or other property, is a citizen of Austria; or

(20) A partnership, association, or other unincorporated body of individuals, or a corporation, and was entirely owned at such time by citizens of Hungary and is so owned at the time of the return of its money or other property; or

(21) A partnership, association, or other unincorporated body of individuals, having its principal place of business at such time within Hungary, or a corporation organized or incorporated within Hungary; or

(22) An individual who at such time was a citizen of Hungary or who, at the time of the return of any money or other property, is a citizen of Hungary;—

Then the President, without any application being made therefor, may order the payment, conveyance, transfer, assignment, or delivery of such money or other property held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine such person entitled, either to the said owner or to the person by whom said property was conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian: *Provided,* That no person shall be deemed or held to be a citizen or subject of Germany or Austria or Hungary or Austria-Hungary for the purposes of this section, even though he was such citizen or subject at the time first specified in this subsection, if he has become or shall become, ipso facto or through exercise of option, a citizen or subject of any nation or State or free city other than Germany, Austria, or Hungary, (first) under the terms of such treaties of peace as have been or may be concluded subsequent to November 11, 1918, between Germany or Austria or Hungary (of the one part) and the United States and/or three or more of the following-named powers: The British Empire, France, Italy, and Japan

(of the other part), or (second) under the terms of such treaties as have been or may be concluded in pursuance of the treaties of peace aforesaid between any nation, State, or free city (of the one part) whose territories, in whole or in part, on August 4, 1914, formed a portion of the territory of Germany or Austria-Hungary and the United States and/or three or more of the following-named powers: The British Empire, France, Italy, and Japan (of the other part). For the purposes of this section any citizen or subject of a State or free city which at the time of the proposed return of money or other property of such citizen or subject hereunder forms a part of the territory of any one of the following nations: Germany, Austria, or Hungary, shall be deemed to be a citizen or subject of such nation. And the receipt of the said owner or of the person by whom said money or other property was conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian shall be a full acquittance and discharge of the Alien Property Custodian or the Treasurer of the United States, as the case may be, and of the United States in respect to all claims of all persons heretofore or hereafter claiming any right, title, or interest in said money or other property, or compensation or damages arising from the capture of such money or other property by the President or the Alien Property Custodian: *Provided further, however,* That except as herein provided no such action by the President shall bar any person from the prosecution of any suit at law or in equity to establish any right, title, or interest which he may have therein.

(c) Any person whose money or other property the President is authorized to return under the provisions of subsection (b) hereof may file notice of claim for the return of such money or other property, as provided in subsection (a) hereof, and thereafter may make application to the President for allowance of such claim and/or may institute suit in equity to recover such money or other property, as provided in said subsection, and with like effect. The President or the court, as the case may be, may make the same determinations with respect to citizenship and other relevant facts that the President is authorized to make under the provisions of subsection (b) hereof.

Section 32:

(a) The President, or such officer or agency as he may designate, may return any property or interest vested in or transferred to the Alien Property Custodian (other than any property or interest acquired by the United States prior to December 18, 1941), or the net proceeds thereof, whenever the President or such officer or agency shall determine—

(1) that the person who has filed a notice of claim for return, in such form as the President or such officer or agency may prescribe, was the owner of such property or interest immediately prior to its vesting in or transfer to the Alien Property Custodian, or is the legal representative (whether or not appointed by a court in the United States), or successor in interest by inheritance, devise, bequest, or operation of law, of such owner; and

(2) that such owner, and legal representative or successor in interest, if any, are not—

(A) the Government of Germany, Japan, Bulgaria, Hungary, or Rumania; or

(B) a corporation or association organized under the laws of such nation: *Provided,* That any property or interest or proceeds which, but for the provisions of this subdivision (B), might be returned under this section to any such corporation or association, may be returned to the owner or owners of all the stock of such corporation or of all the proprietary and beneficial interest in such association, if their ownership of such stock or proprietary and beneficial interest existed immediately prior to vesting in or transfer to the Alien Property Custodian and continuously thereafter to the date of such return (without regard to purported divestments or limitations of such ownership by any government referred to in subdivision (A) hereof) and if such ownership was by one or more citizens of the United States or by one or more corporations organized under the laws of the United States or any State, Territory, or possession thereof, or the District of Columbia: *Provided further,* That such owner or owners shall succeed to those obligations limited in aggregate

amount to the value of such property or interest or proceeds, which are lawfully assertible against the corporation or association by persons not ineligible to receive a return under this section; or

(C) an individual voluntarily resident at any time since December 7, 1941, within the territory of such nation, other than a citizen of the United States or a diplomatic or consular officer of Italy or of any nation with which the United States has not at any time since December 7, 1941, been at war: *Provided*, That an individual who, while in the territory of a nation with which the United States has at any time since December 7, 1941, been at war, was deprived of life or substantially deprived of liberty pursuant to any law, decree, or regulation of such nation discriminating against political, racial, or religious groups, shall not be deemed to have voluntarily resided in such territory; or

(D) an individual who was at any time after December 7, 1941, a citizen or subject of Germany, Japan, Bulgaria, Hungary, or Rumania, and who on or after December 7, 1941, and prior to the date of the enactment of this section, was present (other than in the service of the United States) in the territory of such nation or in any territory occupied by the military or naval forces thereof or engaged in any business in any such territory: *Provided*, That notwithstanding the provisions of this subdivision (D) return may be made to an individual who, as a consequence of any law, decree, or regulation of the nation of which he was then a citizen or subject, discriminating against political, racial, or religious groups, has at no time between December 7, 1941, and the time when such law, decree, or regulation was abrogated, enjoyed full rights of citizenship under the law of such nation: *And provided further*, That, notwithstanding the provisions of subdivision (C) hereof and of this subdivision (D), return may be made to an individual who at all times since December 7, 1941, was a citizen of the United States, or to an individual who, having lost United States citizenship solely by reason of marriage to a citizen or subject of a foreign country, reacquired such citizenship prior to the date of enactment of this

proviso if such individual would have been a citizen of the United States at all times since December 7, 1941, but for such marriage: *And provided further,* That the aggregate book value of returns made pursuant to the foregoing proviso shall not exceed $9,000,000; and any return under such proviso may be made if the book value of any such return, taken together with the aggregate book value of returns already made under such proviso does not exceed $9,000,000; and for the purposes of this proviso the term 'book value' means the value, as of the time of vesting, entered on the books of the Alien Property Custodian for the purpose of accounting for the property or interest involved; or

(E) a foreign corporation or association which at any time after December 7, 1941, was controlled or 50 per centum or more of the stock of which was owned by any person or persons ineligible to receive a return under subdivisions (A), (B), (C), or (D) hereof: *Provided,* That notwithstanding the provisions of this subdivision (E), return may be made to a corporation or association so controlled or owned, if such corporation or association was organized under the laws of a nation any of whose territory was occupied by the military or naval forces of any nation with which the United States has at any time since December 7, 1941, been at war, and if such control or ownership arose after March 1, 1938, as an incident to such occupation and was terminated prior to the enactment of this section; and

(3) that the property or interest claimed, or the net proceeds of which are claimed, was not at any time after September 1, 1939, held or used, by or with the assent of the person who was the owner thereof immediately prior to vesting in or transfer to the Alien Property Custodian, pursuant to any arrangement to conceal any property or interest within the United States of any person ineligible to receive a return under subsection (a) (2) hereof;

(4) that the Alien Property Custodian has no actual or potential liability under the Renegotiation Act or the Act of October 31, 1942 (56 Stat. 1013; 35 U.S.C. 89-96), in respect of the property or interest

or proceeds to be returned and that the claimant and his predecessor in interest, if any, have no actual or potential liability of any kind under the Renegotiation Act or the said Act of October 31, 1942; or in the alternative that the claimant has provided security or undertakings adequate to assure satisfaction of all such liabilities or that property or interest or proceeds to be retained by the Alien Property Custodian are adequate therefor; and

(5) that such return is in the interest of the United States.

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